

United States District Court  
Central District of California

HOLLYWAY CLEANERS &  
LAUNDRY COMPANY, INC.; MILTON  
CHORTKOFF; BURTON CHORTKOFF;  
EDYTHE CHORTKOFF; WILMA  
CHORTKOFF,

Plaintiffs,

v.

CENTRAL NATIONAL INSURANCE  
COMPANY OF OMAHA, INC,

Defendant.

Case No. 2:13-cv-07497-ODW(E)

**ORDER DENYING DEFENDANT'S  
MOTION FOR  
RECONSIDERATION [94]**

**I. INTRODUCTION**

Defendant Central National Insurance Company of Omaha, Inc. ("CNI") asks this Court to reconsider its November 7, 2016, Order granting Plaintiffs' Motion for Partial Summary Judgment. (ECF Nos. 93, 84.) For the following reasons, the Court **DENIES** Defendant's Motion.

**II. FACTUAL BACKGROUND**

This case relates to a dispute between the owners of a dry cleaning business and their insurance carrier. Plaintiffs assert that CNI failed to defend them as required by

1 contract in an underlying state court action for environmental contamination. (Compl.  
 2 ¶ 1, ECF No. 1.) Plaintiffs filed a Motion for Partial Summary Judgment as to CNI's  
 3 duty to defend and breach of that duty. (Mot. for Partial Summ. J.) The Court granted  
 4 the Motion, and in doing so it rejected CNI's argument that the contract was void due  
 5 to Plaintiffs' fraudulent acts and omissions. (Order Granting Mot. for Partial Summ.  
 6 J. 10.) The Court determined that CNI was barred from bringing such a defense, since  
 7 it was not included in its Answer. (*Id.*) See *In re Adbox, Inc.*, 488 F.3d 836, 841 (9th  
 8 Cir. 2007). Following the Court's Order, CNI filed the instant Motion for  
 9 Reconsideration.<sup>1</sup> (ECF No. 94.)

## 10 II. LEGAL STANDARD

11 A party may file a Motion for Reconsideration pursuant to Federal Rule of Civil  
 12 Procedure 59(e) within twenty-eight days of the order that it seeks to amend.  
 13 However, Rule 59(e) is an "extraordinary remedy to be used sparingly" and is rarely  
 14 granted "absent highly unusual circumstances." *Kona Enters., Inc. v. Estate of*  
 15 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal quotation marks omitted); *Marlyn*  
 16 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir.  
 17 2009).

18 Local Rule 7-18 dictates that there are only three grounds on which such a  
 19 motion may be granted:

- 20
- 21 (1) a material difference in fact or law from that presented to the  
 22 Court before such decision that in the exercise of reasonable diligence  
 23 could not have been known to the party moving for reconsideration at  
 24 the time of such decision, or (2) the emergence of new material facts  
 25 or a change of law occurring after the time of such decision, or (3) a  
 26

---

27 <sup>1</sup> After carefully considering the papers filed in support of and in opposition to the Motion for  
 28 Reconsideration, the Court deems the matter appropriate for decision without oral argument. Fed. R.  
 Civ. P. 78; L.R. 7-15.

1 manifest showing of a failure to consider material facts presented to  
2 the Court before such decision.

### 3 III. DISCUSSION

4 CNI asserts that the third circumstance contemplated in Local Rule 7-18 is  
5 present here; it argues that this Court failed to consider material facts in CNI's Answer  
6 in ruling that CNI did not raise any "void" or "fraud"-based defenses. (Mot. 2.) CNI  
7 discusses a number of the affirmative defenses included in its Answer, arguing that  
8 each of them contains language "aimed directly at the issue of the subject policy being  
9 rendered void or otherwise unenforceable due to the fraudulent conduct of Plaintiffs."  
10 (*Id.* at 4.)

11 The Court disagrees that it failed to consider CNI's Answer. Simply put, CNI's  
12 Answer does not mention fraud, the possibility that the contract might be void, or  
13 even the existence of any misrepresentations on Plaintiffs' part. (*See* Answer, Not. of  
14 Removal, Ex. B, ECF No. 1.) CNI argues that its Answer's sufficiency should be  
15 subject to California law, since at the time it filed its Answer the case had not yet been  
16 removed from California state court. (Reply 2–3, ECF No. 96.) CNI's position is that  
17 because its Answer should be analyzed under California law, Federal Rule 9(b)  
18 requiring a heightened pleading standard for fraud does not apply. (*Id.*)

19 Even if CNI's Answer is not subject to Rule 9(b), CNI is incorrect in its  
20 assertion that California does not require the affirmative defense of fraud to be stated  
21 with particularity. (*See id.* at 3.) California case law clearly supports the opposite  
22 conclusion. *See, e.g., Appollo Capital Fund, LLC v. Roth Capital Partners, LLC*, 158  
23 Cal. App. 4th 226, 240 (2007) ("Fraud allegations must be pled with more detail than  
24 other causes of action."); *Small v. Fritz Companies, Inc.*, 30 Cal. 4th 167, 184 (2003)  
25 ("In California, fraud must be pled specifically; general and conclusory allegations do  
26 not suffice."); *Stansfield v. Starkey*, 220 Cal. App. 3d 59, 64 (1990) ("[F]raud must be  
27 specifically pleaded (who said what to whom and when and where) and the  
28

1 circumstances of discovery of the fraud must be pleaded (when, by whom, where and  
2 how).”).

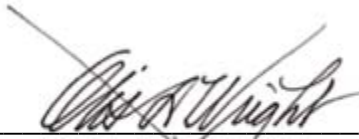
3 Far from reaching this standard, CNI’s Answer does not include any mention of  
4 a “fraud” or of the particular circumstances underlying the alleged fraud. (*See id.*)  
5 The Court cannot find what is not there. As such, the Court determines that CNI has  
6 not raised any valid grounds for reconsideration of the Court’s November 7, 2016,  
7 Order.

8 **IV. CONCLUSION**

9 For the reasons discussed above, the Court DENIES Defendant’s Motion for  
10 Reconsideration (ECF No. 94).

11 **IT IS SO ORDERED.**

12  
13 December 6, 2016

14  
15 

16 **OTIS D. WRIGHT, II**  
17 **UNITED STATES DISTRICT JUDGE**  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28